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threshold but which does not exceed the simplified acquisition threshold, except those bilateral awards specified in (a)(2) above.

(c) If a clause is included in the master instrument (e.g., in an IDIQ contract or a BPA), it is not necessary to also include the clause in a task order or delivery order thereunder.

(d) When a dollar amount or dollar threshold is specified (e.g., \$25 million or simplified acquisition threshold), the dollar amount of the award (contract or order) includes any options thereunder.

## Subpart 352.2—Texts of Provisions and Clauses

### 352.201-70 Paperwork Reduction Act.

As prescribed in 301.106(b), the Contracting Officer shall insert the following clause:

#### PAPERWORK REDUCTION ACT (JANUARY 2006)

(a) This contract involves a requirement to collect or record information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is outside the scope of their employment, for use by the Federal government or disclosure to third parties; therefore, the *Paperwork Reduction Act of 1995* (44 U.S.C. 3501 *et seq.*) shall apply to this contract. No plan, questionnaire, interview guide or other similar device for collecting information (whether repetitive or single time) may be used without the Office of Management and Budget (OMB) first providing clearance. Contractors and the Contracting Officer's Technical Representative shall be guided by the provisions of 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the HHS operating division or Office of the Secretary Reports Clearance Officer to determine the procedures for acquiring OMB clearance.

(b) The Contractor shall not expend any funds or begin any data collection until OMB Clearance is received. Once OMB Clearance is received from the Contracting Officer's Technical Representative, the Contracting Officer shall provide the Contractor with written notification authorizing the expenditure of funds and the collection of data. The Contractor shall allow at least 120 days for OMB clearance. The Contracting Officer will consider excessive delays caused by the Government which arise out of causes beyond the control and without the fault or negligence of the Contractor in accordance with

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the Excusable Delays or Default clause of this contract.

(End of clause)

### 352.202-1 Definitions.

As prescribed in FAR 2.201, the Contracting Officer shall insert the clause in FAR 52.202-1, Definitions, as revised by 302.201:

#### DEFINITIONS (JANUARY 2006)

(a) In accordance with 52.202-1(a)(1), substitute the following as paragraph (a):

“(a) The term “Secretary” or “Head of the Agency” (also called “Agency Head”) means the Secretary, Deputy Secretary, or any Assistant Secretary, Administrator or Commissioner of the Department of Health and Human Services; and the term “his/her duly authorized representative” means any person, persons, or board authorized to act for the Secretary.”

(b) In accordance with 52.202-1(a)(1), add the following paragraph (h):

“(h) The term “Contracting Officer's Technical Representative” means the person who monitors the technical aspects of contract performance. The Contracting Officer's Technical Representative is not authorized to issue any instructions or directions which cause any increase or decrease in the Statement of Work/Performance Work Statement/Specifications which would result in the increase or decrease in the price of this contract, or changes in the delivery schedule or period of performance of this contract. If applicable, the Contracting Officer's Technical Representative is not authorized to receive or act upon any notification or revised cost estimate provided by the Contractor in accordance with the Limitation of Cost or Limitation of Funds clauses of this contract.”

### 352.203-70 Anti-lobbying.

As prescribed in 303.808-70, the Contracting Officer shall insert the following clause:

#### ANTI-LOBBYING (JANUARY 2006)

Pursuant to the current HHS annual appropriations act, except for normal and recognized executive-legislative relationships, the Contractor shall not use any HHS contract funds for (i) publicity or propaganda purposes; (ii) the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television or video presentation designed to support or defeat legislation pending before the Congress or any State

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legislature, except in presentation to the Congress or any State legislature itself; or (iii) payment of salary or expenses of the Contractor, or any agent acting for the Contractor, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

(End of clause)

### 352.215-1 Instructions to offerors—competitive acquisition.

As prescribed in 315.209, the Contracting Officer shall insert the following paragraph (e) in the provision in FAR 52.215-1, Instructions to Offerors—Competitive Acquisition:

(e) *Restriction on disclosure and use of data.*

(1) The proposal submitted in response to this request may contain data (trade secrets; business data (e.g., commercial information, financial information, cost and pricing data); and technical data) which the offeror, including its prospective subcontractor(s), does not want used or disclosed for any purpose other than for evaluation of the proposal. The use and disclosure of any data may be so restricted; provided, that the Government determines that the data is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the offeror marks the cover sheet of the proposal with the following statements, specifying the particular portions of the proposal which are to be restricted:

“Unless disclosure is required by the Freedom of Information Act, 5 U.S.C. 552, as amended, (the Act) as determined by Freedom of Information (FOI) officials of the Department of Health and Human Services (HHS), data contained in the portions of this proposal which the offeror has specifically identified by page number, paragraph, etc. as containing restricted information shall not be used or disclosed except for evaluation purposes.

The offeror acknowledges that HHS may not be able to withhold a record (e.g., data, document, etc.) nor deny access to a record requested pursuant to the Act and that the HHS’ FOI officials must make that determination. The offeror hereby agrees that the Government is not liable for disclosure if HHS has determined that disclosure is required by the Act.

If a contract is awarded to the offeror as a result of, or in connection with, the submission of this proposal, the Government shall have the right to use or disclose the data to the extent provided in the contract. Proposals not resulting in a contract remain subject to the Act.

The offeror also agrees that the Government is not liable for disclosure or use of un-

marked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under the Act. The data subject to this restriction are contained in pages (insert page numbers, paragraph designations, etc. or other identification).”

(2) In addition, the offeror must mark each page of data it wishes to restrict with the following statement

“Use or disclosure of data contained on this page is subject to the restriction on the cover sheet of this proposal or quotation.”

(3) Offerors are cautioned that proposals submitted with restrictive statements or statements differing in substance from those cited above may not be considered for award. The Government reserves the right to reject any proposal submitted with nonconforming statement(s).

### 352.215-70 Late proposals and revisions.

As prescribed in 315.208, the Contracting Officer shall insert the following provision:

#### LATE PROPOSALS AND REVISIONS (JANUARY 2006)

Notwithstanding the procedures contained in FAR 52.215-1(c)(3) of the provision of this solicitation entitled Instructions to Offerors—Competitive Acquisition, the Government may consider a proposal received after the date specified for receipt if it appears to offer the best value to the Government and it was received before proposals were distributed for evaluation, or within 5 calendar days after the exact time specified for receipt, whichever is earlier.

(End of provision)

### 352.216-70 Additional cost principles.

As prescribed in 316.307(j), the Contracting Officer shall insert the following clause:

#### ADDITIONAL COST PRINCIPLES (JANUARY 2006)

(a) *Bid and proposal (B & P) costs.* (1) B & P costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal contracts, grants, and agreements, including the development of scientific, cost, and other data needed to support the bids, proposals, and applications.

(2) B & P costs of the current accounting period are allowable as indirect costs.

(3) B & P costs of past accounting periods are unallowable in the current period. However, if the organization’s established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable.